

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

DERRICK S. GALVIN
ADC # 163461

PETITIONER

V. CASE NO. 5:19-CV-00137-KGB-JTK

WENDY KELLEY, Director
Arkansas Department of Correction

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Petitioner filed his Petition for Writ of Habeas Corpus (DE # 1) on April 12, 2019, pursuant to 28 U.S.C. § 2254. On May 6, 2019, the Court granted his Application to Proceed In Forma Pauperis (DE # 2). Petitioner filed his Motion to Dismiss and Not Appeal on June 18, 2019, asserting that the matter does not need to be addressed through a federal court at this time and requesting dismissal of the petition. (DE # 3)

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” By Petitioner’s own admission he does not wish to proceed with this matter at this time, and request dismissal.

Conclusion

Based on the foregoing, it is recommended that the instant habeas petition (DE 1) be dismissed without prejudice pursuant to F.R.C.P. 41(a)(2).

SO ORDERED this 12th day of August, 2019.



UNITED STATES MAGISTRATE JUDGE